

DEPARTMENT OF FOOD AND AGRICULTURE
PROPOSED CHANGES IN THE REGULATIONS
Title 3, California Code of Regulations
Section 3430(b), Karnal Bunt Disease Interior Quarantine
INITIAL STATEMENT OF REASONS/
PLAIN ENGLISH POLICY STATEMENT OVERVIEW

Description of the Public Problem, Administrative Requirement, or Other Condition or Circumstance the Regulation is Intended to Address

This regulation is intended to address the obligations of the Department of Food and Agriculture to protect the agricultural industry of California and prevent the introduction and spread of injurious plant pests.

Specific Purpose and Factual Basis

The specific purpose of Section 3430 is to provide for the State to regulate the movement of hosts and possible carriers of Karnal bunt within and from the area under quarantine to prevent artificial spread of the disease to noninfested areas to protect California's agricultural industry.

The factual basis for the determination by the Department that amendment of this regulation is necessary is as follows:

Karnal bunt, an exotic fungal disease of wheat and other grains, was detected in California in 1996. The disease was detected in Riverside County on March 25, 1996 and Section 3430, Karnal Bunt Disease Interior Quarantine, was adopted against the disease, caused by the fungus Tilletia indica, on April 5, 1996. The disease was also detected in Imperial County in March and the quarantine area amended to add Imperial County on April 10, 1996.

Karnal bunt is a disease of wheat, durum wheat, and triticale (a hybrid of wheat and rye). The disease affects both yield and grain quality. It adversely affects the color, odor, and palatability of flour and other foodstuffs made from wheat. It does not present a risk to

human health. If the disease were allowed to spread and become permanently established in California's wheat production areas, California's agricultural industry would suffer serious losses due to decreased production of wheat and other host grains and loss of markets due to quarantines enacted by other states and countries against grain and hay of California production. California's annual wheat production is valued at over \$170 million. If Karnal bunt is allowed to spread, the overall crop loss and impact on quality may be significant. The disease has already affected United States grain exports. Over 50 countries are known to regulate or prohibit grain movement on the basis of Karnal bunt.

When Section 3430 was adopted and amended in 1996, determination of the presence of Karnal bunt in an area was based on the detection of spores of *Tilletia indica* based on microscopic examination. Scientists have since determined that a positive determination as to the presence of Karnal bunt can be made only if bunted wheat, or other host, kernels are present. In 1997, the Department determined that many of the areas in Imperial and Riverside counties that were placed under quarantine should be removed from Section 3430, because the original determination that the areas were infested was based on the presence of spores only. All areas, except the Palo Verde Valley area of Riverside and Imperial counties and the Bard-Winterhaven area of Imperial County, were removed from the quarantine on May 1, 1997. Subsequent annual surveys for the Karnal bunt disease were conducted and the survey results for the Bard-Winterhaven area were negative. As a result, this area was removed from the regulated area on July 2, 2001.

The Department, in conjunction with the United States Department of Agriculture (USDA), has continued to conduct annual disease surveys both within and outside the remaining regulated area. On January 5, 2004, the USDA published an interim rule (Docket No. 03-047-1) that became effective that date, and removed an area of Riverside County from the federal domestic quarantine governing interstate movement. The USDA took this action because recently completed detection and delineating surveys demonstrated that area was free of this disease and the area should be removed from this federal domestic quarantine regulation to relieve restrictions that are no longer warranted. It was also determined through cooperative state and federal surveys that Karnal bunt was also eradicated from

the Palo Verde Valley (in part) area of Imperial County. The USDA is accepting comments on their interim rule until March 5, 2004, after which, they will publish their final rule. In the final rule, the USDA also intends on removing the Palo Verde Valley (in part) area of Imperial County from the federal regulation.

As a result of the USDA's action, it was necessary to harmonize the regulated area contained in Section 3430(b)(1) pertaining to the Palo Verde Valley (in part) area of Riverside County with that area contained in the federal interim rule. This ensures the interstate and intrastate restrictions governing movement of hosts and possible carriers of the disease from the regulated area are consistent and equivalent. Additionally, it was also necessary to remove the regulated area contained in Section 3430(b)(2) pertaining to the Palo Verde Valley (in part) area of Imperial County.

On February 5, 2004, Departmental staff met with the USDA staff involved in defining the federal quarantine boundary lines for Karnal bunt disease. It was determined that as written, the federal interim rule boundary description could not be used for the purposes of describing the regulated area to be contained in Section 3430(b). For instance, in the federal interim rule, the eastern boundary is described as the Colorado River. Along this area of the Colorado River, the river changes course over time and it also crosses back and forth between the States of California and Arizona. The Department does not have any regulatory authority in the State of Arizona. Therefore it was mutually agreed that in the final rule, in order to ensure clarity and an accurate definable description for the federal rule, the USDA would adopt the emergency amendment boundary description for Section 3430(b) that was effective February 17, 2004.

The amendment of Section 3430(b) reduced the quarantine area in the Palo Verde Valley (in part) area of Riverside County and eliminated that portion of the Palo Verde Valley (in part) area of Imperial County from the regulation. The Palo Verde Valley area is located in the southeast portion of Riverside County and continues south into the northeast portion of Imperial County. To prevent artificial spread of the disease to non-infested areas to protect California's agricultural industry, it is necessary to continue to regulate movement of hosts

and possible carriers within and from the portion of Riverside County considered to still be the infested area; however, it is no longer necessary to regulate the movement of hosts and possible carriers from this area of the Palo Verde Valley that was removed.

It was necessary to amend this regulation on an emergency basis to remove the quarantine on the portion of Riverside County (a portion of the Palo Verde Valley) and Imperial County considered to be free from the disease and immediately remove restrictions on the intrastate movement of hosts and possible carriers which are unnecessary. If these unnecessary restrictions were continued and if non-infested areas remained under quarantine, it would create an unnecessary burden for the general public and businesses in that area. Host crops are being or will be harvested in or moved from these areas soon. Some commercially produced host crops, if the restrictions were continued, would have to be treated or would not be allowed movement from the area. Therefore, it is necessary to amend Section 3430(b) as an emergency regulation change.

Estimated Cost or Savings to Public Agencies or Affected Private Individuals or Entities

The Department of Food and Agriculture has determined that Section 3430 does not impose a mandate on local agencies or school districts, except that an agricultural commissioner of a county under quarantine has a duty to enforce it. No reimbursement is required under Section 17561 of the Government Code because the Imperial County Agricultural Commissioner requested the changes in the regulation which placed the county under quarantine. This amendment reduces the size of the quarantine area and lessens some restrictions; therefore, county enforcement activities will also be reduced.

The Department also has determined that the amendment of the regulations will involve no costs or savings to any state agency, no nondiscretionary costs or savings to local agencies or school districts, no reimbursable costs or savings to local agencies or school districts under Section 17561 of the Government Code, and no costs or savings in federal funding to the State.

The Department is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

The Department has determined that this action will not have a significant adverse economic impact on housing costs or California businesses, including the ability of California businesses to compete with businesses in other states. The Department's determination that the action will not have a significant adverse economic impact on businesses was based on the following:

Section 3430(b) was amended to reduce the Palo Verde Valley portion of Riverside County and remove the Palo Verde Valley portion of Imperial County from the regulated area. The effect of the proposed is to remove the authority for the State to regulate the movement of hosts and possible carriers of the Karnal bunt disease pathogen from the areas of these counties. This action removed restrictions on the movement of hosts and carriers of Karnal bunt disease in these areas of Riverside and Imperial counties and should have a positive impact on businesses in that area.

ASSESSMENT

The Department has made an assessment that this amendment to the regulations would not (1) create or eliminate jobs within California, (2) create new business or eliminate existing businesses within California, or (3) affect the expansion of businesses currently doing business within California.

Alternatives Considered

The Secretary of the Department of Food and Agriculture must determine that no alternative considered would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

Information Relied Upon

The Department relied upon the following studies, reports, and documents in the

amendment of Section 3430(b):

Memo dated February 6, 2004 to Stephen Brown from Asif Maan.

Docket No. 03-047-1, Karnal Bunt; Regulated Areas, 7 CFR Part 301, Department of Agriculture, Animal and Plant Health Inspection Service, Federal Register, Volume 69, No. 2, January 5, 2004.